

Om Parkash Vs. Vidhya Devi

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Court : Punjab and Haryana

Decided On : Mar-21-1991

Reported in : 1992CriLJ658

Judge : J.S. Sekhon, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125, 125(3), 357, 421 and 482

Appeal No. : Criminal Misc. No. 2176 M of 1990

Appellant : Om Parkash

Respondent : Vidhya Devi

Advocate for Def. : Akash Jain, Adv.

Advocate for Pet/Ap. : V.B. Aggarwal, Adv.

Judgement :

ORDER

J.S. Sekhon, J.

1. In proceedings under Section 125 of the Code of Criminal Procedure, 1973, Smt. Vidya Devi was awarded maintenance allowance at the rate of Rs. 150/- per month for herself and Rs. 100/ - per month for her minor daughter against her

husband Om Parkash from the date of application, i.e., 9-5-1984. It is not disputed that the order of the Judicial Magistrate has become final as the revision petition filed against it has since been dismissed by the Additional Sessions Judge and petition under Section 482 of the Code was also dismissed by the High Court in Cr. Misc. 4919-M of 1989. Om Parkash, husband or the father, as the case may be, failed to pay the amount of maintenance allowance to his wife and daughter which resulted in taking execution proceedings by Vidya Devi respondent against him. On 25-1-1990, Om Parkash, the husband failed to turn up before the Court of the Additional Chief Judicial Magistrate, Kurukshetra, despite service inferred from the refusal to accept service. The trial Court under these circumstances, ordered the arrest of Om Parkash, and issued conditional warrants of arrest for 16-2-1990 stating that if he pays Rs. 15,500/- as arrears of maintenance allowance he shall not be arrested. Aggrieved against this order, the husband-petitioner has invoked the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, contending that without exhausting coercive methods provided under Section 421 of the Code of Criminal Procedure like attachment of property etc. etc., the arrest of the petitioner could not be ordered.

2. I have heard the learned counsel for the parties besides perusing the record.

3. The provisions of Sub-section (3) of Section 125 of the Code read as under:--

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made;

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due.

Provided further that if such person offers to maintain his wife on condition of her living with him and she refused to live with him, such Magistrate may consider any

grounds of refusal stated by her, and may make order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation : If a husband has contracted marriage with another woman or keeps a mistress it shall be considered to be just ground for the wife's refusal to live with him.

A bare glance through the same leaves no doubt that if any person fails to comply with the order of the Magistrate to pay maintenance allowance without sufficient cause, such Magistrate may issue warrant for levying the amount due in the manner provided for levying fines and may sentence such person for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made.

4. The procedure for levying fine is contained in Section 421 of the Code of Criminal Procedure which reads as under:--

421. Warrant for levy of fine.

(1) When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may--

(a) issue a warrant for the levy of the amount by attachment and sale of movable property belonging to the offender.

(b) issue a warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter.

Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under

Section 357.

(2) The State Government may make rules regulating the manner in which warrants under Clause (a) of Sub-section (1) are to be executed, and for the summary determination of any claims made by any person other than the Offender in respect of any property attached in execution of such warrant.

(3) Where the Court issues a warrant to the Collector under Clause (b) of Sub-section (1), the Collector shall realise the amount in, accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law;

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.'

The perusal of the above-quoted Section 421 reveals that there are two methods for levying fine and the Court has been empowered to opt for either of these two modes or both at one and the same time. One of these modes provided under Sub-section (1) (a) is to issue a warrant for levy of the amount by attachment and sale of movable property belonging to the offender and the other being issuance of a warrant to the Collector authorising him to realise the amount as arrears of land revenue from the movable property, or both. In the case in hand, the trial Court had not resorted to any of these coercive measures for the recovery of the arrears of maintenance allowance although it is mentioned in the impugned order of the trial Court that the husband is a man of means. Thus, legally the impugned order of the trial Court being not sustainable calls for quashment.

5. Before parting with the judgment, I am constrained to remark that Om Parkash petitioner appears to be a callous sort of person as he failed to pay even half of the maintenance allowance, as ordered by this Court, to his wife and daughter. Although he deserves no sympathy yet all the same in view of the legal position, there is no option but to accept this petition and quash the impugned order of the trial Court. The petitioner is directed to appear before the trial Court on 26-4-1991 and furnish details of the movable and immovable property owned by him to the trial Court.

6. The trial Court is directed to dispose of the execution petition expeditiously preferably within six months.

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